

FRANCHISE TAX BOARD
MINUTES
DECEMBER 4, 2008 MEETING

The Franchise Tax Board met in open session at 1:30 p.m. at the Franchise Tax Board, 9646 Butterfield Way, Gerald Goldberg Auditorium, Sacramento, California. Present were Deputy Controller Marcy Jo Mandel for Hon. John Chiang, chair, Hon. Judy Chu, Ph.D., and Hon. Michael C. Genest. As noted below, Hon. John Chiang, chair, arrived during the meeting.

Franchise Tax Board

Staff Participating: Selvi Stanislaus, Geoffrey S. Way, Patrick Kusiak, Lisa Garrison, Karen Smith, Steve Sims, Brian Putler, and Colleen Berwick.

Others Participating: Melissa Anderson, California Budget Project; Catherine Apker, CSEA; Roland Boucher, United Californians for Tax Reform; Michelle Ferreira, Holme Roberts & Owen; Lenny Goldberg, California Tax Reform Association; Gina Rodriguez, Spidell Publishing; David Shaw, California Society of Enrolled Agents; and John Woodford, California Society of CPAs.

Item 1. – Approval of Minutes

The minutes of the September 4, 2008, Franchise Tax Board meeting were unanimously approved (3-0).

Item 2. – Legislative Matters

Legislative Proposals – Possible Board action.

The Board received a brief summary of the five legislative proposals.

The Board heard from the following member of the public regarding this Agenda item:

Catherine Apker – CSEA

The Board voted 2-0 (Member Genest abstaining) to approve the following proposals:

LP 09-16 – Notification To Professional Licensing Board When Certain Penalties Are Assessed

LP 09-18 – Limited Partnership Revival-Account Fees, Tax Returns, and Expedited Service Fees

LP 09-24 – Homeowner's and Renter's Assistance (HRA)/Validate HRA Disability Claims by Requiring That Claimants Receive Disability Payments Under Specified Federal or State Programs

LP 09-26 – Homeowner's and Renter's Assistance (HRA)/Extend Tolling Period For Medically Incapacitated Claimants

LP 09-27 – Use of IRS Data Regarding Waivers Of The Federal Statute Of Limitations

Following consideration of this Item, the Board took up Item 4. – Administrative Matters.

Item 4. – Administrative Matters

- a. Enterprise Date to Revenue BCP – Board approval.

The Board voted 2-0 (Member Genest abstaining) to approve the BCP.

- b. Contracts over \$1 million – Board approval.

During consideration of Item 4.b. – Contracts over \$1 million, Hon John Chiang arrived and assumed the duties of chair for the remainder of the meeting.

The Board voted 3-0 to approve the contracts.

- c. Budget Act Highlights – Information item.

The Board received a staff report.

Following the conclusion of this matter, the Board took up Item 3, Regulation Matters.

Item 3. – Regulation Matters

- a. 2009 Rulemaking Calendar – Board approval.

The Board heard from the following members of the public regarding this Agenda item:

Melissa Anderson – California Budget Project
Lenny Goldberg – California Tax Reform Association

The Calendar was approved unanimously (3-0). The Board voted unanimously (3-0) to direct staff to proceed with an interested parties meeting for draft Regulation 24451 and bring it back at the next Board meeting.

- b. Proposed Regulation Section 25114 (Presumption Arising from Federal Audits) - Staff report and possible Board action.

The Board received a staff report and voted unanimously (3-0) to approve the staff request to proceed with the formal regulatory process.

Following the conclusion of this Item, the Board took up Item 5. – Taxpayers' Bill of Rights.

Item 5. – Taxpayers' Bill of Rights

See attached Taxpayers' Bill of Rights Hearing, Franchise Tax Board, Minutes, December 4, 2008.

Item 6. – Executive Officer's Time

There was no discussion under this Agenda item.

Item 7. – Board Members' Time

The Board members presented commendations to Jim Yates for his service at FTB.

The Board adjourned the meeting at 2:41 p.m.

Board Liaison

Date

PENDING BOARD APPROVAL

TAXPAYERS' BILL OF RIGHTS HEARING
FRANCHISE TAX BOARD
MINUTES
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The Franchise Tax Board met in open session at 1:30 p.m. at the Franchise Tax Board, 9646 Butterfield Way, Gerald Goldberg Auditorium, Sacramento, CA. Present were Hon. John Chiang, Deputy Controller Marcy Jo Mandel, Hon. Judy Chu, Ph.D., and Hon. Michael C. Genest.

Franchise Tax Board

Staff Participating:

Selvi Stanislaus, Geoffrey S. Way, Patrick Kusiak, Steve Sims, Brian Putler, and Colleen Berwick.

Others Participating:

David Shaw, California Society of Enrolled Agents; Gina Rodriguez, Spidell Publishing, Inc.; Lenny Goldberg, California Tax Reform Association; Roland Boucher, United Californians for Tax Reform; Michelle Ferreira, Holme Roberts & Owen; and John Woodford, California CPA Society.

Taxpayers' Bill of Rights Hearing

Chair Chiang read the opening statement regarding this annual hearing required by law and introduced Franchise Tax Board staff members who were present to respond to questions.

David Shaw

Mr. Shaw presented written materials and provided oral comment to the Board on the following issues:

- Expressed his concern on the state's failure to conform to federal tax law and the confusions and errors being caused by the lack of conformity or in some cases partial conformity, which he feels can be worse. Mr. Shaw mentioned in particular the nonconformity between the Mortgage Forgiveness Act of 2007 and SB 1055, and the nonconformity to the Tax Increase and Prevention Act of 2005, the Small Business and Work Opportunity Act of 2007, and recent federal changes regarding the preparer penalty.
- Stated that since FTB does not discipline unethical tax preparers except by the imposition of penalties, the disciplinary actions of sanctions or disbarments does not affect the CTEC registered preparers. CTEC preparers should be impacted just as licensed preparers.

Gina Rodriguez

Ms. Rodriguez presented written materials and provided oral comment to the Board on the following issues:

- Impact of Underpayment Penalty on New, Accelerated Estimated Tax Requirement (30/30/20/20 issue).
- Practitioners want to be able to allow the refunds from claim for refunds to be applied to estimated tax payments for the next year.
- FTB should issue guidance immediately to address whether taxpayers qualify for the California Other State Tax Credit for franchise taxes paid to Texas in order to prepare their 2007 and 2008 California returns.

Lenny Goldberg

Mr. Goldberg provided oral comment to the Board on the following issues:

- Praised FTB for the great job with regard to "My Account" in the area of the transparent relationship between FTB and the taxpayer online. Indicated it was under-utilized because the IRS does not have a similar process and people start with IRS; urged FTB to work with IRS to bring them aboard as well.
- Reiterated comments made by Gina Rodriguez pertaining to allowing refunds from claim for refunds to be applied to estimated tax payments for the next year.

Roland Boucher

Mr. Boucher provided oral comment to the Board on the following issue:

- Commented on the 540EZ short form; likes the downloadable PDF form that does the addition and subtraction for you, but would like to get the \$5,000 standard deduction to match with the IRS.

Michelle Ferreira

Ms. Ferreira provided written materials and provided oral comment to the Board on the following issue:

- Expressed concern about the disparity in California's penalties and penalties which may apply to the same taxpayer at the federal level. The penalties mentioned were: noneconomic substance penalty pursuant to Rev. & Tax. Code section 19774, the post-amnesty penalty pursuant to Rev. & Tax. Code section 19777.5, and the interest-based-only penalty pursuant to Rev. & Tax. Code section 19777. There is no effective administrative or judicial forum to contest these penalties.

John Woodford

Mr. Woodford provided oral comment to the Board on the following issue:

- Addressed concerns with recent legislation, SB 28, and the changes to Rev. & Tax. Code section 19136-3 which affects tax year beginning 01/01/09 and uses the current year's exception for avoiding underpayment of estimated tax penalties for taxpayers with AGI in excess of one million dollars. Would like to see legislation that would use the AGI from the previous year to create the phase-out of the exemption.

Member Genest asked the Board to clarify the process after the Taxpayers' Bill of Rights Hearings; what the process is to address the issues raised and requested a report from staff regarding the outcome.

Taxpayer Rights Advocate indicated written responses, including analyses where appropriate, with respect to each item raised during the hearing would be provided to person that raised the matter and to Board members for their consideration.

The hearing adjourned at 2:41 p.m.

Board Liaison

Date